



REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Claims 1-5, 7-13, 15-21 and 23-66 are pending, of which claims 28-32 are withdrawn from consideration. Of the pending and non-withdrawn claims, claims 1, 9, 17 and 35 are independent.

§ 103 REJECTION – ARIAS, WICKLUND, MILLER

Claims 1-2, 7-10, 15-18, 23-27, and 34-35 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Arias (USP 5,724,514), in view of Wicklund (USP 6,295,295), and further in view of Miller et al. (USP 5,920,701). Applicant respectfully traverses.

For a Section 103 rejection to be proper, a *prima facie* case of obviousness must be established. See *M.P.E.P. 2142*. One requirement to establish *prima facie case* of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. See *M.P.E.P. 2142; M.P.E.P. 706.02(j)*. Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

Independent claim 1 defines a method of controlling image data transferred between a server storing image data and a client connected to the server via a network and receiving the image data by accessing the server. More specifically, claim 1 recites, in part “measuring a transfer rate of the

network at the time the client requests transfer of image data sets from the server” and “determining the number of the image data sets to be sent to the client in response to the transfer request, based on the transfer rate and a permitted transfer time determined in advance.” Contrary to the Examiner’s allegation, the combination of Arias, Wicklund and Miller cannot teach or suggest the above recited features.

In the Final Office Action, The Examiner admits that Arias does not teach the features of determining the number of the image data sets to be sent to the client in response to the transfer request based on the transfer rate and a permitted transfer time determined in advance. However, contrary to the Examiner’s allegation, Wicklund does not teach or suggest this feature.

The Examiner relies upon Wicklund, col. 11, lines 54-60, which is a portion of a claim in Wicklund. A closer reading of the claim clearly shows that the Examiner is taking the claim out of context.

More specifically, the claim recites “Method according to claim 1, further comprising the step of assigning a minimum packet transfer rate to each logical channel, set minimum packet transfer rate being used to determine a maximum value of the counting means, and hence the number of packets to be transferred on a selected logical channel during a predetermined time period, to allow more than one packet to be sorted into the first substructure for the logical channel code according to the bandwidth of the logical channel.” In other words, Wicklund recites that the transfer rate is assigned so that a

certain number of packets, i.e. more than one, can be transferred within the time period. Stated another way, the transfer rate is set based on the amount of data and the amount of time.

This is in complete contrast with the feature of determining the number of image data sets to be sent based on the transfer rate and the permitted transfer time. It is clear that Wicklund cannot teach or suggest the above recited feature as the Examiner alleges.

Moreover, Wicklund also teaches away from the feature of measuring the transfer rate of the network at the time client requests transfer image data sets as recited in claim 1. Thus, by definition, Wicklund cannot be combined with any other references including Arias to reject claim 1. In addition, Wicklund is not analogous to either Arias or to the invention as recited. Wicklund is directed toward a method of packet data switching and scheduling the transfer of information packets. This is analogous to the network layer 3 of the OSI model. In contrast, Arias is analogous to the application layer 7 of the same OSI model.

Miller is not relied upon to correct for at least the above noted deficiencies of Arias and Wicklund. This alone is sufficient to distinguish claim 1 from the combination of Arias, Wicklund and Miller.

But in addition, contrary to the Examiner's allegation, Miller does not teach or suggest the feature of transferring to the client a message notifying that the number of the image data sets to be transferred is 0 in the case where

the number of the image data sets to be transferred has been determined to be 0.” In the claim as recited, the image data is stored in the server and the client requests the transferred image data sets from the server. In other words, the recipient of the image data sets requests the transfer of image data sets.

However, in Miller, it is the data source provider that makes the request to transfer data. Miller discloses a system in which one or more content source providers 12, 14 makes a request to the resource scheduler 10 to transfer data to one or more replicated servers 16, 18. *See Figure 1 of Miller*. Included in the request is information regarding size or amount of data to be transmitted, the desired completion time for transmission and a priority level associated with the data. *See Miller, col. 2, lines 2-7*. Thus, it is clear that Miller cannot teach or suggest transferring to the client a message as recited.

Further, Miller discloses that the scheduler determines the amount of bandwidth available for content data transmission at times surrounding the desired completion time. *See col. 2, lines 19-22*. In other words, Miller teaches against the feature of measuring a transfer rate of the network at the time client requests transfer of the image data sets as recited in claim 1.

For at least the above stated reasons, independent claim 1 is distinguishable over the combination of Arias, Wicklund and Miller.

Independent claim 9 recites, in part “means for measuring a transfer rate of the network at the time the client requests transfer of image data sets from the server”, “means for determining the number of the image data sets to be

transferred to the client in response to the transfer request, based on the transfer rate and a permitted transfer time determined in advance” and “means for sending a message to the client notifying that the number of the image data sets is 0 in the case where the number of the image data sets has been determined to be 0.” As demonstrated above, the combination of Arias, Wicklund and Miller cannot teach or suggest these features. Accordingly, independent claim 9 is distinguishable over the same combination of references.

Independent claim 17 recites, in part “measuring a transfer rate of the network at the time the client requests transfer of image data sets from the server”, “determining the number of the image data sets to be sent to the client in response to the transfer request, based on the transfer rate and a permitted transfer time determined in advance” and “transferring to the client a message notifying that the number of the image data sets to be transferred is 0 in the case where the number of the image data sets to be transferred has been determined to be 0.” It is demonstrated above that the combination of Arias, Wicklund and Miller cannot teach or suggest these features. Accordingly, claim 17 is distinguishable over the same combination of references.

Independent claim 35 recites, in part “measuring a transfer rate of the network at the time the client requests transfer of image data sets from the server” and “determining an actual number of the image data sets to be sent to the client in response to the transfer request based on the transfer rate and a permitted transfer time determined in advance, wherein an actual number is

less than or equal to the requested number.” It is respectfully submitted that none of Arias, Wicklund and Miller teaches or suggests these features. Accordingly, claim 35 is distinguishable over the combination of Arias, Wicklund and Miller.

Claims 2, 7-8, 10, 15-16, 18, 23-27 and 34 depend from independent claims 1, 9 or 17 directly or indirectly. Accordingly, these dependent claims are distinguishable over Arias, Wicklund, and Miller for at least their dependencies from independent claims 1, 9 or 17.

The dependent claims are also distinguishable on their merits. For example, claims 7, 15, 23, and 34 recite that the information regarding the transfer rate is transferred to the client. Contrary to the Examiner’s allegation, none of Arias, Wicklund, and Miller teaches or suggests this feature. As another example, claims 8, 16 and 24 recite that the image data sets are thumbnail image data for displaying on the client. Again, contrary to the Examiner’s allegation, none of Arias, Wicklund and Miller teaches or suggests this feature.

For at least this reasons stated above, applicant respectfully requests that the rejection of claims 1-2, 7-10, 15-18, 23-27 and 34-35 based on Arias, Wicklund and Miller be withdrawn.

§ 103 REJECTION – ARIAS, WICKLUND, MILLER, MOGUL

Claims 3-5, 11-13, 19-21, 33 and 36-66 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Arias, Wicklund, Miller and further in view of Mogul et al. (USP 6,243,761). Applicant respectfully traverses.

It is noted that the rejected claims depend from independent claims 1, 9, 17, or 35 directly or indirectly, and Mogul is not relied upon to correct for at least the above noted deficiencies of Arias, Wicklund, and Miller. Therefore, independent claims 1, 9, 17, and 35 are also distinguishable over the combination of Arias, Wicklund, Miller and Mogul. Accordingly, these dependent claims are also distinguishable over the same combination of Arias, Wicklund, Miller, and Mogul.

Applicant respectfully requests that the rejection of claims 3-5, 11-13, 19-21, 33, and 36-66 based on Arias, Wicklund, Miller and Mogul be withdrawn.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg. No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.


Respectfully submitted,

BIRCH, STEWART, KOLASCH &, BIRCH, LLP

By: 

Michael K. Mutter

Reg. No. 29.680


MKM/HNS/vd
2091-0230P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000